of firearms that the Second Amendment protects individuals in possessing.

Dealing with the challenge on its own merits, the Court held that only possession of military-type and/or militarily useful weapons is protected by the amendment, based on the amendment's reference to a militia (which the Court expressly recognized included virtually the whole male population). Having fixed on this military-weapon standard, the Court reversed the dismissal of the indictment because the defendants had not even made an attempt to show that a sawed-off shotgun is a military weapon. For equally obvious reasons, in abeyance of such a showing, the Court was not in a position to determine whether a sawed-off shotgun is a military weapon.

Significantly, *Miller* reflected an individual-right view of the Second Amendment, even though such a view was not argued to the Court: The matter went up from the trial court on the government's appeal; by the time it was briefed, one of the defendants had died and the other apparently did not engage counsel. The only brief filed was the government's. The states'-right collective-right theory was presented to the Court in the brief for the United States. Yet the Court did not adopt or even mention it, despite the lack of any counterargument.

The Supreme Court's brief pronouncements on the Second Amendment in over 35 cases to date have never accepted the states'-right or collective-right view. In listing the personal rights that the Bill of Rights protects against government, the Supreme Court has repeatedly cited the Second Amendment.

The earliest reference appeared in *Dred Scott*, where Chief Justice Roger Taney emphasized that, if blacks could be considered citizens, they would enjoy all the rights of citizenship. These rights include "the full liberty of speech . . . and [the right] to keep and carry arms wherever they went." Later, Taney illustrated the rights of citizenship by listing the right to arms along with freedom of speech and assembly, jury trial, and the right against self-incrimination. Compare the Court's two latest cases briefly mentioning the Second Amendment: *United States* v. *Verdugo-Urquidez* (1990) suggests the phrase "the right of the people" is to be construed *in pari materia* in the First, Second, and Fourth Amendments and in other parts of the Constitution where it always refers to rights of individuals against government; and in *Muscarello* v. *United States* (1998), both the majority and dissenting opinions invoke the phrase "bear arms" to describe a situation in which an individual "carries" a firearm.

In the gun-control debate, contentious fanaticism often trumps intellectual honesty and even common sense. That is particularly true of arguments over the Second Amendment. The arguments opposing the standard model run the gamut from the specious to the ludicrous to the mendacious. On the other side, I have often—but always vainly!—emphasized that the Amendment does not read "There shall be no gun laws of which the gun lobby disapproves." No less than other constitutional rights, the right to arms is subject to numerous qualifications and exceptions. In the last ten pages of my 1983 *Michigan Law Review* article, I outlined controls that I deem constitutional, though unwelcome to the gun lobby. Their riposte was to denounce me as a purveyor of "Orwellian Newspeak." That is because I wrote that, while responsible law-abiding adults are guaranteed freedom of choice to possess firearms, gun controls are valid, so long as they do not substantially burden or infringe that freedom of choice.

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T.V. Offensive—Iraq War

(A Picture of an Anchorette)

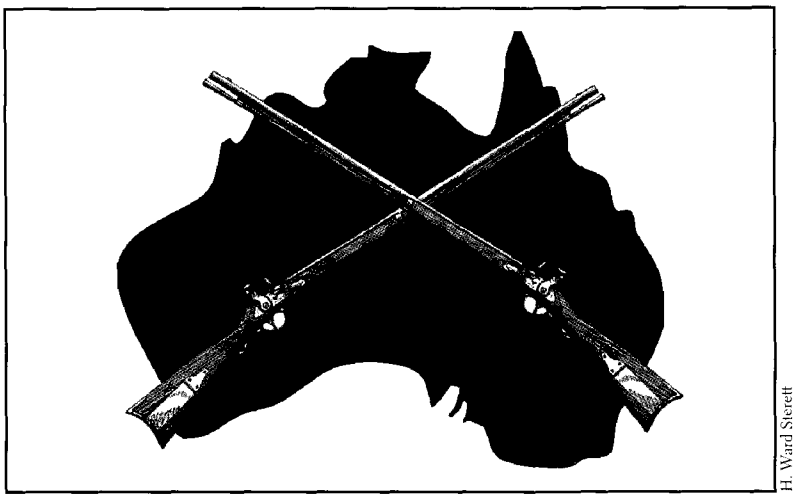
by Andrew Huntley

Down from your swivel throne you front your glass,
And, yes, those earrings with the necklace worked:
The stuffy brigadier (retired) had perked,
Thrusting his expertise—almost a pass!
You turn, look back, review your tailored arse—
A pity you can't stand and swirl: it irked
To watch the stupid weather-girl who smirked,
Legging the isobars (that nightly farce).
Meanwhile men die; but should *you* dye again?
Was it the Shi'ite fighting? was it Sunni?—
Your brightness lightened up that live attack:
O, cool, seducing face, blinding to pain—
Your heartless, cursèd means to make your money;
Honey, you would be cleaner on your back.

Who Needs Guns?

Lessons From Down Under

by David B. Kopel



H. Ward Sterett

Australia has something under 20 million people living on a continent as large as the continental United States. It is known as a place where an overseas visitor might, in some regions at least, find a frontier atmosphere. There has been good historical reason for that. Australia has an Outback, unique wildlife, and a legendary spirit of independence. Its soldiers, for instance, knew the meaning of a command to fix bayonets, and they acquitted themselves well in those conflicts where they stood beside Americans. The commissioned English officers notoriously did not like the Australians, though, because of Australian disdain for authority. Australian soldiers did not fall in behind bad leaders, and, under pressure, they tended to make their own decisions. It was nevertheless always conceded that Australians displayed great courage and that they did follow leaders who valued equality and fairness. With a state-oriented system of decentralized government and a long historical record as a haven for refugees from unfree countries, Australia has prided herself on tolerance. Now, however, the federal government has begun a war on civil liberty, aimed at destroying the nation's long-established gun culture.

> We had to stand in lines. These were up to maybe a couple of hundred yards long in the bigger towns. On a Saturday afternoon during the buy-back time, I'd drive home after running an errand in the city, and I'd see the line yet again, over and over. When the weather was good, it was longer. Blokes would be standing there with their guns wrapped up in newspaper and old blankets, talking quietly and shuffling forward.

These are the words of an Australian who wished to remain anonymous. He is describing what happened when the Australian government, on pain of imprisonment, made him hand in his registered .22 rimfire rifle so that it could be destroyed. After a multiple shooting in Tasmania, in April 1996, in which 32 people were killed by a madman using a self-loading rifle with a military appearance, the federal government, under newly elected Prime Minister John Howard, enacted laws banning all self-loading rifles and shotguns. All pump-action shotguns were also confiscated. (Pump-action guns were also confiscated in Germany in 2002, and the "Million" Mom March favors similar confiscation in the United States.)

The firearms being surrendered in Australia were not the property of criminals. The guns were plainly sporting arms that had always been legal.

> They put up tents. Inside the tents there were especially-trained officers. They'd been told they needed to be watchful and keep order in case any of the people became unruly. So they stood around and looked stern while we all filed past. One tried to make polite conversation with me, but I felt sick. I said, "Nothing personal, mate, but I'm in no mood to talk to you. Just leave me alone." And at least he had enough sense to do that.

The so-called "buyback" was, of course, not a buyback of anything. The government did not own the guns in the first place. The guns were not for sale, either. They were brought to the confiscation centers under pain of imprisonment. The "buyback" euphemism was akin to calling armed robbery "in-

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David B. Kopel is author of The Samurai, the Mountie, and the Cowboy: Should America Adopt the Gun Controls of Other Democracies? *which was named Book of the Year by the American Society of Criminology, Division of International Criminology.*